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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1959

No. 505

ROBERTA S. BRICE,
Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, DEPARTMENT "A" THEREOF, HON. ALLEN LYNCH, JUDGE,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
to the District Court of Appeal, State of California,
Second Appellate District.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI
to the District Court of Appeal, State of California, Second Appellate District.

Roberta S. Brice, defendant in the Superior Court of the State of California in and for the County of Los Angeles and petitioner in the District Court of Appeal, State of California, Second Appellate District and in the Supreme Court of the State of Cali-

fornia, petitions that a writ of certiorari issue out of and under the seal of this Court to review the order and final judgment of the District Court of Appeal of the State of California, Second Appellate District, entered on the 22nd day of June, 1959, and hearing denied by the Supreme Court of the State of California on the 22nd day of July, 1959.

OPINIONS BELOW.

There were no opinions.

STATEMENT OF JURISDICTION.

The order and judgment of the District Court of Appeal of the State of California, Second Appellate District, sought to be reviewed was dated June 9, 1959.

On October 20, 1959, Mr. Justice Douglas granted an extension to petitioner to file her petition for certiorari to and including October 30, 1959.

The Supreme Court of the United States has jurisdiction to review the judgment and order of the District Court of Appeal of the State of California, Second Appellate District, under 28 U.S.C.A. 1257.

Madruga v. Superior Court, 346 U.S. 556, 74 S.Ct. 298, 98 L.Ed. 290;

Rescue Army v. Municipal Court, 91 L. Ed. 1606.

QUESTIONS PRESENTED FOR REVIEW.

1. Petitioner, a citizen of the United States is deprived of her constitutional rights pursuant to the 4th, 5th and 14th Amendments of the Constitution of the United States where

(a) she is arrested without a warrant of any kind and, thereafter her person and apartment are searched;

(b) at a time when petitioner was intoxicated and in her apartment;

(c) at which time certain police officers of the County of Los Angeles smelled the odor of marijuana in the corridor adjacent to her apartment, and at which time said police officers forcibly broke into her apartment without a warrant of arrest and without a warrant to search or seize any of petitioner's personal effects from her person or from her apartment.

2. The Court below, by its judgment and order in denying a writ of prohibition, deprived the petitioner of due process of law pursuant to the 4th, 5th and 14th Amendments of the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

4th, 5th and 14th Amendments of the Constitution of the United States;

Section 995 of the Penal Code of the State of California;

Section 999(a) of the Penal Code of the State of California;

Article I, Section 19, California Constitution.

STATEMENT OF THE CASE.

On or about 7:15 in the evening of April 9, 1959, Officers Chapman and Coria of the Santa Monica Police Department received from an anonymous informant, information that two women in an apartment at 1647 Appian Way, Santa Monica, were believed to be smoking marijuana. Thereupon the officers went to that address.

Upon arrival they smelled an odor which they believed from their experience to be marijuana; that they were of the opinion that the odor or smell emanated from Apartment 15 wherein petitioner was a lawful occupant; that neither of the police officers knocked on the door of the apartment; they turned the door knob and pushed the door open; that your petitioner appeared to be intoxicated.

That at the time the officers broke into the apartment they did not see any smoke although the windows of the apartment were closed. They did not see any person in the apartment, including your petitioner, smoking. They did not observe any cigarette that was smoking or had been smoked. They observed a regular cigarette butt on the floor of the living room. It was not marijuana. They did not observe any illegal substance. They did not observe the commission of any crime.

That thereupon the officers searched the person of your petitioner and the apartment generally. Your petitioner was arrested and charged with a violation of Section 11,500 of the Health and Safety Code of the State of California, a felony.

The following substances were seized from the apartment and the person of the petitioner and a co-defendant named Brown:

One "roach" and one partly-burned cigarette stub identified as containing marijuana found in jail after the arrest of petitioner and Brown by matron New, taken from the watch pocket of co-defendant Brown and marked Exhibit 1-A at the trial of the preliminary hearing;

A small quantity of leafy substance identified as marijuana and taken from the left front pocket of petitioner and marked Exhibit 1-B;

A bag of Bull Durham tobacco containing two dozen small leafy fragments identified as containing marijuana taken from the petitioner as the police illegally broke into her apartment and identified in the record as Exhibit 1-C;

Three packages of cigarette papers taken from petitioner as the police walked in, one cigarette butt and marijuana debris taken from the ash tray in the apartment near the position of co-defendant Brown as the police walked in and marked in the record as Exhibit 1-D.

That thereafter on April 16, 1959, a preliminary hearing was held on said charge before the Honorable Harry J. Borde, Judge Presiding of the Municipal Court of Santa Monica Judicial District, County of Los Angeles, State of California, which charge is recorded in the official records of said Court and numbered therein F 2278. That at said preliminary hear-

ing evidence was adduced; that all of said matters and things occurring at said preliminary hearing and all of said evidence is annexed hereto and marked Exhibit "A".

That on April 16, 1959, the said judge of said Municipal Court made and entered its order holding your petitioner to answer to said charge before the respondent Superior Court.

That thereafter and on April 27, 1959, an Information was filed in the respondent Superior Court of the State of California and numbered in the official records thereof 214,595, by William B. McKesson, the duly qualified and acting District Attorney of the County of Los Angeles, State of California, charging your petitioner in said Information with a violation of Section 11,500 of the Health and Safety Code of the State of California, a felony.

That thereafter and within the time allowed by law, your petitioner filed with respondent Superior Court her written motion attacking the validity and constitutionality of said Information and the evidence upon which it was based, pursuant to Section 995 of the Penal Code of the State of California, and requesting that the above-entitled and within-numbered Information against her be dismissed upon the ground that your petitioner had been committed without reasonable or probable cause in that all of the evidence adduced at said preliminary hearing was in its entirety illegally obtained by and through forcible and illegal entry upon private premises, illegal search and seizure and illegal arrest, contrary to the privileges and im-

munities guaranteed to your petitioner under the 4th, 5th and 14th Amendments of the Constitution of the United States.

That on June 3, 1959, said motion, filed as aforesaid pursuant to the provisions of Section 995 of the Penal Code of the State of California, was denied by respondent Superior Court.

That on June 9, 1959, your petitioner filed her verified petition for a writ of prohibition under the provisions of Section 999(a) of the Penal Code of the State of California with the District Court of Appeal of the State of California, Second Appellate District, Division One. (Appendix B.)

That on June 22, 1959, the said District Court of Appeal made and entered its order denying said petition, without opinion.

That on July 1, 1959, your petitioner filed her verified petition for a hearing with the Supreme Court of the State of California.

That on July 22, 1959, the Supreme Court of the State of California denied your petitioner a hearing, without opinion. That the said order of the said Supreme Court of the State of California was and is a final order and determination of the highest court of the State of California.

That the within petition for a writ of certiorari to this Court, is made by petitioner upon the ground and for the reason that the decision of the Supreme Court of the State of California denying petitioner a hearing

after denial by the District Court of Appeal of said petition for a writ of prohibition, presents a question of fundamental importance in constitutional law and that it should be decided by this Court.

REASONS FOR GRANTING WRIT OF CERTIORARI.

A writ of certiorari should be granted for the following reasons:

1. That your petitioner is a citizen of the United States of America and entitled to the protection of her rights by the 4th, 5th and 14th Amendments of the Constitution of the United States;

2. That the record in this case presents fundamental questions of constitutional law wherein your petitioner was arrested without a warrant of any kind, based upon mere suspicion and the introduction of illegally-obtained evidence;

3. That your petitioner has been denied due process of law as guaranteed to her by the 14th Amendment of the Constitution of the United States.

4. That it would be a grave injustice to petitioner if she should be required to undergo the ordeal and ignominy and expense of a trial under these circumstances and under the circumstances when the evidence against her has been obtained in gross violation of her constitutional rights and guarantees under the 4th, 5th and 14th Amendments to the Constitution of the United States.

The right of petitioner to be secure in her apartment against unlawful searches and seizures is guaranteed by both the Federal and State Constitutions.

United States Constitution, Fourth Amendment;

State of California Constitution, Article I, Section 19.

POINTS AND AUTHORITIES.

Section 995 of the Penal Code of the State of California;

Section 999(a) of the Penal Code of the State of California;

People v. Schuber, 71 C.A. 2d 773.

"The proof which will authorize a magistrate in holding an accused person for trial must consist of legal competent evidence. No other type of evidence may be considered by the magistrate. The rules of evidence require the production of legal evidence and exclusive of whatever is not legal."

Badillo v. Superior Court, 46 Cal. 2d 269, quoting *Rogers v. Superior Court*, 46 Cal. 2d 3.

"A defendant has been held to answer without reasonable and probable cause if his commitment is based entirely on incompetent evidence, and accordingly in such cases the court should grant a motion to set aside the information (Penal Code 995) and if it does not do so a peremptory writ of prohibition will issue to prohibit further proceedings (Penal Code 999a)."

In the *Badillo* case the Court said:

"No problem is presented in applying this rule in cases involving searches and seizures in which the facts bearing on the legality of the searches or seizures are undisputed, and establish as a matter of law that the evidence is, or is not admissible . . . In the present case defendant made a prima facie showing of illegal entry by establishing that the officers broke into the house without a search warrant and the burden then rests upon the People to justify such invasion and such seizure and it is immaterial whether or not it was defendant's house (People v. Martin, 45 Cal. 2d 755)."

People v. Brown, 45 Cal. 2d 640;
People v. Simon, 45 Cal. 2d 645;
People v. Harvey, 142 C.A. 2d 728;
People v. Gale, 46 Cal. 2d 254.

In the *Martin* case the Court stated:

"Whenever evidence is obtained in violation of constitutional guarantees such evidence is inadmissible whether or not it was obtained in violation of defendant's rights."

Danton George Rea v. United States, 350 U.S. 214.

In the latter case it would appear that evidence illegally seized by Federal agents would not be admissible in a State Court notwithstanding the rule announced by the Court in *People v. Cahan*, 44 Cal. 2d 434.

People v. Boyles, 45 Cal. 2d 652.

CONSTITUTIONAL (DENIAL PRIVILEGES, IMMUNITIES UNDER 4TH, 5TH AND 14TH AMENDMENTS).

"One's domicile may not be invaded for an arrest, search and seizure on the basis of an informer's tip combined with the officer's sense of smell."

U. S. v. Lee, 83 Fed. 2d 195;
U. S. v. Kaplan, 89 Fed. 2d 869;
Alvau v. U. S., 33 Fed. 2d 467.

"An informer's tip combined with an officer's sense of smell which led him to the door of one's living quarters is not sufficient probable cause to justify a lawful arrest and incidental search and seizure in one's home."

Johnson v. U. S., 333 U.S. 10-17, 92 L.Ed. 438.

It is respectfully submitted that the petition should be granted and the writ issued.

Dated, San Francisco, California,
October 26, 1959.

ROBERTA S. BRICE,
Petitioner.
By WILLIAM E. FERRITER,
JAMES C. PURCELL,
Attorneys for Petitioner.

(Appendices A and B Follow.)

Appendix A

In the Municipal Court of Santa Monica Judicial District
County of Los Angeles, State of California

Division II

No. F-2278

The People of the State of California, Plaintiff, vs. Roberta S. Brice and Geomais L. Brown, Defendant(s).

Hon. Harry J. Borde, Judge

Reporter's Transcript
Preliminary Hearing
Thursday, April 16, 1959

Appearances:

For the Plaintiff—Marshall M. Schulman
Deputy District Attorney of Los Angeles County.

For the Defendant( ) Brice—Thomas Morris
8237 Fountain Avenue, Los Angeles 46, Calif.

For the Defendant Brown—F. M. McMullen
Deputy Public Defender of Los Angeles County.

In the Municipal Court of Santa Monica Judicial District
County of Los Angeles, State of California

No. F-2278

The People of the State of California, Plaintiff,
vs.
Roberta S. Brice and Geomais L. Brown, Defendant(s).

Santa Monica, California, Thursday.

At 11:30 a. m. on the above date this case was called for Preliminary Hearing before the Honorable Harry J. Borde, Judge of the Municipal Court of Santa Monica Judicial District, County of Los Angeles, State of California.

The defendant(s) appeared in court represented by their counsel, Thomas Morris, Esq., for the Defendant Brice, and F. M. McMullen, Esq., Deputy Public Defender, for the Defendant Brown, the People being represented by Marshall M. Schulman, Esq., Deputy District Attorney.

Simone Elden was assigned as shorthand reporter.

Whereupon, the following proceedings were had and testimony given as follows:

Santa Monica, California, Thursday, April 16, 1959, 11:30 o'clock A. M.

The Court. The People against Brice and Brown.

Clifford C. Cromp, called as a witness by and on behalf of the People, after being duly sworn, was examined and testified as follows:

The Clerk. State your name, please.

The Witness. Clifford C. Cromp.

Direct Examination

By Mr. Schulman:

Q. Mr. Cromp, you are a forensic chemist, employed by the Los Angeles County Sheriff's Criminological Department, is that correct?

A. Yes, sir.

Mr. Schulman. And may it be stipulated, gentlemen, for the purpose of the preliminary hearing only, that Mr. Cromp is an expert qualified to give testimony concerning narcotics?

The Court. So stipulated.

Mr. Morris. So stipulated.

Mr. Schulman. Thank you.

If the Court please, I have here a large brown manila envelope, and it is sealed at this time and apparently has contents in it.

May the envelope and its contents be marked People's Exhibit 1 for identification?

The Court. It may be so marked.

Q. By Mr. Schulman. I am going to show you an envelope marked People's Exhibit 1 in a sealed condi-

tion, and ask you if you have seen the envelope before?

A. Yes, I have.

Q. When was the first time you saw it?

A. On the 14th day of April, 1959, at our laboratory.

Q. What was its condition at that time?

A. It was then sealed with cellophane tape, at its flap.

Q. What did you do with the envelope?

A. I cut open the upper end of the envelope and examined its contents.

Q. Now, the envelope is now sealed. Did you reseal it after examining the contents?

A. Yes, sir.

Q. And then you brought it into court here?

A. Yes, sir.

Q. Would you open it up now, break your seal, and tell us if the contents contained within People's Exhibit 1 at this time were the same contents you saw when you first examined People's Exhibit 1?

A. There are now two small white envelopes and two long white envelopes. These are the same envelopes which were in the larger envelope when I first opened it.

One of the envelopes, one of the smaller envelopes, which is marked "Brown, Getmais," contained one roach at that time, one partly burned cigarette stub containing a green leafy substance. In my opinion the green leafy substance is composed of parts of the plant cannabis sativa or marijuana.

The Court. Let us mark that 1-A.

Mr. Schulman. All right, and on the envelope that it is contained within I will write, "1-A" on the envelope and make a circle around it.

The next envelope Mr. Cromp is opening, may this be marked People's Exhibit 1-B for identification?

The Court. It may be so marked.

Mr. Schulman. I will write "1-B" on the envelope and make a circle around it.

Q. By Mr. Schulman. I will show you 1-B, then, sir.

A. This is the second of the smaller manila envelopes. Loose in the envelope when I first opened it was a small quantity of a green leafy substance. In my opinion that green leafy substance is composed of parts of the plant cannabis sativa or marijuana.

Q. 1-B?

A. Yes. I placed the material which was loose in the envelope in this separate package (indicating).

Q. Now, the next envelope you are opening——

Mr. Schulman. May that be marked 1-C for identification, and I will write "1-C" with a circle around it; and the last envelope, may that be marked "1-D" for identification?

The Court. They may be so marked.

Mr. Schulman. I will write "1-D" on the envelope and make a circle around it.

The Witness. This envelope contained a Durham tobacco cloth sack. I opened the sack and examined the contents. In my opinion there were several small leaf fragments from the plant cannabis sativa or marijuana mixed with the tobacco in the sack.

Another long white envelope——

Q. by Mr. Schulman. That is 1-D you are referring to?

A. Yes.

Q. ——contained three packages of cigarette papers and a cellophane package inside of which was a partly burned cigarette stub with a quantity of plant substance.

The second stub, in my opinion, contained tobacco. Loose in the cellophane package was a quantity of tobacco fragments mixed with small leaf fragments from the plant cannabis sativa or marijuana.

The envelope also contained a Salem cigarette package, inside of which were three red gelatin capsules and six yellow gelatin capsules. In my opinion these capsules contained derivatives of barbiturate acid.

Q. No narcotic?

A. That is correct.

Q. After your examination of 1-D, did you place them all back in 1-B, all the contents?

A. Yes.

Q. Did you place all the envelopes back in People's Exhibit 1 and seal it?

A. Yes.

Q. And brought them all here to court?

A. Yes, sir.

Mr. Schulman. You may cross examine.

Cross Examination

By Mr. McMullen. Those four exhibits, Officer, there are certain names on the envelopes. What name is on Envelope 1-A?

A. Geomais Brown.

Q. And that is the only name there?

A. Yes.

Q. And what name is on Envelope 1-B?

A. Roberta Brice.

Q. And that is the only name?

A. Yes.

Q. And what name is on the envelope 1-C?

A. Roberta Brice.

Q. And that is the only name?

A. Yes.

Q. And on 1-D?

A. Geomais Brown and Roberta Brice.

Q. Now, the two of them?

A. Both names.

Q. On 1-D?

A. Yes.

Q. Now, these red and orange pills, you say they are barbiturate derivatives and not narcotics?

A. Not narcotics.

Q. Now, which exhibit is the tobacco sack?

A. That is 1-C.

Q. And you say that contained tobacco and fragments of marijuana?

A. Yes.

Q. What are the relative amounts of the components? How much tobacco is compared to how much marijuana?

A. I observed two dozen small leaf fragments scattered in the tobacco in the upper part of the sack.

Q. Would that constitute a twentieth of the contents of the sack?

A. Less than that.

Q. And what does 1-B represent? That is just some marijuana debris?

A. Yes, a small quantity of green leafy substance.

Q. That is not connected with any cigarette wrapper?

A. That is correct, no cigarette wrapper.

Q. Do you know the common denomination of those type of pills, sir, what they are called? Do they have a common name?

A. Yes. These are called either "Yellow Jackets" or "Red Devils" or "Goof Balls."

Mr. McMullen. That is all.

(Witness excused.)

Robert L. Chapman, called as a witness by and on behalf of the People, after being duly sworn, was examined and testified as follows:

The Clerk. State your name, please.

The Witness. Robert L. Chapman.

Direct Examination

By Mr. Schulman:

Q. Mr. Chapman, you are a police officer employed by the Santa Monica Police Department, is that right?

A. Yes, sir.

Q. And you were one of the arresting officers in this case?

A. Yes, sir.

Q. And did you recover some of the exhibits that are before you?

A. Most of them were recovered by Officer Coria.

Q. And he was also one of the arresting officers?

A. Yes, sir.

Q. The following, I assume there is going to be an objection, so I am anticipating the objection: may I ask what were the circumstances leading up to the arrest?

A. Approximately 7:15 p. m. on the 9th of April I received a phone call that an anonymous person had stated there were two women in Apartment 15 at 1647 Appian Way, and they were believed to be smoking marijuana.

I picked up Officer Coria and proceeded to the location—oh, the phone call also informed there were two minor children these persons were supposed to be caring for for a third party. After I picked up Officer Coria, we went to the location.

As we approached the apartment we could smell an odor which I believed to be marijuana smoke. It got a little stronger as we got to the door, while beyond the door and away from the apartment it faded out. I then returned and went down a stairwell which is almost directly in front of the door, and it faded away again. It appeared to use—to me—it was coming from that one apartment.

Q. Had you ever smelled marijuana burning before?

A. Yes, I have.

Q. Does it have a distinctive odor, in your opinion?

A. I believe so, yes.

Q. Would you describe that distinctive odor?

A. Well, about the best way I can describe it is it is somewhat of a sweet odor and musty or heavy.

Q. Like burning leaves, or something of that nature?

A. Similar to that.

Q. This odor you smelled by this door, was that the same you had smelled when you had smelled marijuana burning previously?

A. Yes.

Q. Did you form an opinion as to whether it was marijuana at that time or not?

A. In my opinion the information we received was right, it was.

Q. You thought it was marijuana. What did you do then?

A. There is a little doorbell on the door. I turned the knob, I didn't hear anything. I could hear a low voice or voices inside. I turned the doorknob and pushed the door open. As I walked inside and to my right I saw the defendant Brice. At that time she had a paper, a cigarette paper, in her hand, and a Bull Durham sack. She looked over in my direction and she said, "Sgt. Chapman, come on in."

Q. What happened then?

A. When we entered—when Officer Coria and I entered the room, the odor was somewhat heavy. I asked her what was going on and she said, "Nothing."

I said, "Where is the marijuana?"

She says, "There is nothing."

Her speech was that of an intoxicated person. I have met her before and she didn't talk the same way at that time. What she was under the influence of I did not know.

I asked her if it was her apartment and she said "No," but it belonged to a Pat Byers, that she was baby sitting for them, and I asked her where the children were, and about that time a lady came into the apartment and stated that she and her son had taken the children downstairs, that in her opinion the girls were in no condition to take care of them.

Q. This was said in front of the two defendants?

A. Yes, they were both there.

Q. Then what happened?

A. I think about that time Miss Brice was asked if she minded if we searched, and she said, "No." In fact, she wanted to help us.

When I kept both defendants under observation Officer Coria searched the apartment.

Q. Did you observe Officer Coria search the apartment?

A. I observed part of it, yes.

Q. Did you do any of the searching yourself?

A. I looked around, and the only thing I came up with was the bag of Bull Durham that I had taken away from Miss Brice.

Q. That is contained within People's Exhibit 1-C. The other items contained within Exhibit 1-C you did not recover, I take it?

A. No.

Q. Well, that is all there is of the Bull Durham. Where did you recover the package of Bull Durham?

A. Well, it was more or less taken out of Miss Brice's hands. She had it, and sort of waved it up in the air, and I asked her what was in there, and I don't recall she even mentioned what it was.

Q. What did you do with the item after you recovered that item of Bull Durham?

A. I kept this item in my possession until we had taken it to the Crime Lab.

Q. Then what did you do with it?

A. The next morning, or a few days after, I don't recall which, whether it was the next morning or not, I put all four envelopes together and put them in this large manila envelope (indicating), and transported them to the Sheriff's Crime Lab.

Q. Did you receive eventual possession of all four envelopes?

A. Yes.

Q. And their contents?

A. Yes.

Q. That is 1-A, 1-B, 1-C and 1-D?

A. Yes.

Q. Who gave you possession of those items? Did you receive them from Officer Coria?

A. Officer Coria turned them over to me.

Q. What condition were they in when he turned them over to you?

A. They were sealed. They were opened—this one (indicating) was opened by me, and this one (indicating) was opened by me.

Q. When you say "this one" and "that one," will you please tell us which ones?

A. 1-D and 1-A.

Q. And what did you do after they were opened by you?

A. I looked at the contents, put them in another envelope, and sent them on to the Lab.

Q. Put them into another envelope?

A. Into this envelope (indicating).

They were in an envelope. I opened it and sealed it in the same way. I replaced it into the envelope, put my initials on it, and Coria's initials, and took it to the Crime Lab.

Q. Now, I am not sure I understand. That is 1-D you are referring to?

A. Yes.

Q. When you first saw 1-D, was it in this same envelope?

A. It wasn't, it was in another white envelope.

Q. And what was the condition of that white envelope?

A. It was sealed as this one was sealed.

Q. And who gave you that white envelope?

A. Officer Coria. I opened it to see what the contents were.

Q. Did you examine the contents of 1-D?

A. I did.

Q. Were the contents of 1-D the same contents that were contained in the envelope Officer Coria handed to you?

A. Yes.

Q. Did you seal 1-D?

A. I did.

Q. Where did you receive the contents of 1 A?

A. They were received by both Officer Coria and I from Policewoman—from Matron New when she searched the suspect Brown.

They were placed in an envelope. At the time they were turned over in front of me to Coria, I had not

had time to check it, I was moved out for something else and I had to leave the jail. They were found in the jail.

Q. 1-A was found in the jail?

A. Yes, when she was searched.

Q. And were they in an envelope when they were handed to you?

A. It was then placed in an envelope.

Q. When they were handed to you?

A. They were in an envelope.

Q. And what was the condition of the envelope that was handed to you?

A. It was sealed.

Q. And who handed it to you?

A. Officer Coria.

Q. You opened that?

A I opened that.

Q. You looked at the contents?

A. I looked at the contents.

Q. And you put it in 1-A?

A. And took it to the Sheriff's Department.

Q. Did you seal it after you put it in 1-A?

A. Yes.

Q. What about 1-C and 1-B?

A. 1-C is the one I recovered, and 1-B I had nothing to do with.

Q. Did you ever receive it?

A. Just from Officer Coria.

Q. In what condition was it when you received it?

A. It was sealed.

Q. Then you took all these items and put them in the large manila envelope?

A. And sealed that and took it to the Sheriff's Crime Lab.

Mr. Schulman. You may cross examine.

Cross Examination

By Mr. McMullen:

Q. Officer, you say you received an anonymous call?

A. I did not, the station did.

Q. You did not receive it?

A. No.

Q. But the station informed you they had received an anonymous call?

A. Yes.

Q. And what was the information related on this call?

A. The information I received was that there were two girls in Apartment 15 at 1647 Appian Way that were believed to be smoking marijuana and were taking care of two minor children.

Q. Did this anonymous caller, to your knowledge, state whether or not they had direct knowledge of this, or suspicion?

A. I don't know.

Q. Do you know who received the anonymous call?

A. I received the information from Lt. Hicks. Now, whether he received it directly or not—from his conversation I would say he did receive it.

Q. Was it communicated to you by him or anyone else that the voice of the anonymous caller was recognized or not?

A. Other than being a female, no.

Q. Now, when you entered this apartment you saw the defendant Brown and the defendant Brice?

A. Yes.

Q. Had you seen the defendant Brown previously that day?

A. Yes, I did.

Q. And where had you seen her?

A. Right here.

Q. In this court room?

A. Yes.

Q. Now, did you see her leave this court room?

A. I did not.

Q. Did you see her between the time you saw her in this court room and the time you saw her in the apartment?

A. I did not.

Q. Did you follow her, or have it arranged to have her shadowed?

A. No. We were in another Superior Court the rest of the day.

Q. And you made no arrangements with any other officer to shadow or follow her?

A. No. I didn't know she had been released. I knew the charge against her had been dismissed and she was still in the custody of the Sheriff when I last saw her.

Q. So, it was pure coincidence you again saw her in the apartment that night, nothing to relate finding her in that apartment to the fact that you had seen her discharged for a similar offense in the afternoon.

A. Not a thing.

Q. You say you entered this apartment and smelled marijuana?

A. I smelled the smoke, yes.

Q. And who was with you, again, Officer?

A. Officer Coria.

Q. Did he state whether or not he smelled the smoke also?

A. Yes, he did.

Q. Now, you testified that you recognized the odor of the smoke. What has been your previous experience with marijuana smoke?

A. On numerous occasions I have arrested persons smoking marijuana and I have also burned marijuana to familiarize myself with the odor.

Q. Would the smell or odor of marijuana burning in quantity be the same as the smell of marijuana being smoked in a cigarette?

A. The smell would be the same, but it would be heavier.

Q. In your opinion, when you smelled this marijuana on this occasion, was it being burned in quantity or smoked?

A. Or smoked?

Q. Or being smoked.

A. I would say being smoked.

Q. Now, you detected it outside the door?

A. Yes.

Q. And it was night time?

A. Yes.

Q. Did you see any lights under the door?

A. Not that I recall.

Q. Will you describe the door? Was it a heavy door or a light door?

A. I wouldn't call it a light door. I would just call it an average door.

Q. An ordinary apartment house door?

A. An old apartment house door, yes.

Q. How many feet away as you backed away could you detect the odor?

A. You could detect the odor approximately five feet from the door.

Q. But no further?

A. It may have been a few feet one way or the other.

Q. Do you know whether or not the anonymous caller informed the police whether or not she had seen them smoking or smelled the smoke?

A. I don't know.

Q. When you entered, did you see any smoke in the room?

A. I would not say that you could see it.

Q. There was no haze?

A. It wasn't heavy, no.

Q. Did you testify whether the windows were open or shut in the apartment?

A. I did not testify.

Q. I say, could you testify?

A. I think I could, yes.

Q. Were they open or shut?

A. To my knowledge, they were shut.

Q. All windows were shut?

A. There may have been one open. I was in that room only for a second and didn't notice.

Q. Did you see at that time you entered either one of the defendants smoking?

A. Actually smoking, no.

Q. Did you see any burning, what appeared to be like a cigarette that was smoking, or had been smoked, did you see any butts or roaches?

A. Yes.

Q. Where did you see those?

A. Well, one roach or one butt was right in the middle of the floor when I walked in, into the living room.

Q. Was is smouldering or lighted?

A. No, it was out. It was a regular cigarette butt.

Q. A cigarette butt. This was not a marijuana roach?

A. It was a regular cigarette butt.

Q. I mean, it has no relation to marijuana, is that correct?

A. No.

Q. Well, did you see anything smoking that contained any marijuana?

A. Nothing that was burning, no.

Q. Did you see anything that had been smoked that later turned out to contain marijuana?

A. I saw what I considered to be a roach in an ash tray.

Q. Did you pick it up?

A. I did not. Officer Coria did.

Q. Did he state whether or not it was warm or burning?

A. He didn't state it was burning, he didn't state whether it was warm.

Q. And you didn't touch it?

A. No; I didn't.

Q. Now, you smelled this smell of marijuana outside the door?

A. Yes.

Q. And then you entered?

A. I rang the doorbell first.

Q. Do you know whether or not the doorbell was operating?

A. I do not.

Q. You did not hear any ring?

A. I did not hear any ring.

Q. Did you knock?

A. No, I didn't.

Q. You turned the knob and entered?

A. Yes.

Q. And is it your testimony that marijuana has such a distinctive smell there is no other smell like it?

A. Definitely not.

Q. There is no other smell similar to marijuana that could be noticed?

A. Yes, there is.

Q. There are smells?

A. You asked me what my testimony is, if there wasn't any smell.

Q. I am asking you now, is there any other smell to you like marijuana?

A. There is.

Q. What, would you say?

A. Cypress, it smells similar to cypress.

Q. Can you distinguish between burning cypress and burning marijuana?

A. No, I would not say I could definitely distinguish between the two.

Q. Would you say there is any similarity to burning marijuana and heavy Turkish cigarettes, or foreign cigarettes which have very heavy and sweet aromatic tobacco?

A. I don't think they are similar at all.

Q. You don't think there is any tobacco similar in smell to burning marijuana?

A. To my knowledge, there isn't.

Q. You say you have burned marijuana?

A. Yes.

Q. And where you have made arrests where marijuana was being smoked, how many people were smoking it?

A. I have arrested anywhere from one to eight or ten of them.

Q. And have you ever before this time smelled marijuana outside of a closed door?

A. Yes.

Q. And on how many occasions?

A. Oh, I don't know how many occasions there have been.

Q. Dozens?

A. I will say there were from a half a dozen to a dozen.

Q. Does marijuana smoke permeate the atmosphere more than that of a cigarette or cigar or pipe smoke?

A. The odor sort of hangs.

Q. Do you know whether or not the bathroom window was open?

A. I don't know.

Q. Do you know whether or not a draft was created when you opened the door?

A. No, I don't.

Q. But you saw no haze whatsoever?

A. Well, you asked me when I entered the room.

The Court. He has answered that question. He said he didn't.

Mr. McMullen. Very well, sir.

The Court. Let us not be repetitious.

Mr. McMullen. No further questions.

Mr. Schulman. I have no redirect.

(Witness excused.)

Luis Y. Coria, called as a witness by and on behalf of the People, after being duly sworn, was examined and testified as follows:

The Clerk. State your name, please.

The Witness. Luis Y. Coria.

Direct Examination

By Mr. Schulman:

Q. Mr. Coria, you are a police officer employed by the Santa Monica Police Department, is that correct?

A. Yes, I am.

Q. One of the arresting officers in this case?

A. I am.

Q. And inviting your attention to the date of the arrest, preceding the arrest—this was in an apartment house?

A. Yes, sir, it was.

Q. Was this Apartment 15 of this apartment house?

A. Yes, sir.

Q. And did you have occasion to smell any odor while you were outside the apartment house door?

A. Yes, sir.

Q. What odor was that, if you know?

A. The odor of, in my opinion, burning marijuana.

Q. Did you go inside the apartment?

A. Yes, I did.

Q. Who did you see inside?

A. The defendants Brown and Brice.

Q. Did you make a search of the premises?

A. Yes, I did.

Q. And inviting your attention to People's Exhibit 1 and its contents, 1-A; 1-B, 1-C and 1-D, did you recover any of those items? If you did, tell us what you recovered and what you did with them.

A. The envelope 1-A, this contains a roach with marijuana cigarettes—I mean marijuana leaves and debris. This was taken from the defendant Brown's watch pocket and turned over to me by Matron New, which I sealed in this envelope and placed my initials on the back and the date.

1-B contains debris taken from the envelope I sealed and initialed. This debris was recovered from the left front pocket of the defendant Brice's levis by me.

1-C is the Bull Durham sack which contains my initials and the date. This was recovered from the

defendant Brice's left hand as we walked into the apartment.

1-D are the three packages of cigarette papers that were recovered from the defendant Brice's person. Also in the same envelope is a Salem package which was pretty well folded up, containing nine tablets, six yellow——

Q. Well, omit that part about the tablets. Go on to the other.

A. That is all now.

Q. I take it, then, you put them all, or saw them all placed in their respective envelopes and sealed them up?

A. No, there is some more in 1-D. I recovered a seed, a marijuana seed, from underneath the sink in a basket which contained several seeds, but it was pretty filthy with grease and everything, so I just took one seed and put it in this cellophane.

This contains a small cigarette butt with tobacco and some marijuana debris in it, taken from the ash tray just at the head of the defendant Brown's position in the apartment as we walked in.

Q. What else? Is there anything else?

A. That is all.

Q. Then, I take it, you either sealed or saw all these items sealed by your partner, is that correct,—Sgt. Chapman?

A. I sealed this evidence in envelopes, placed my initials on it, and turned it over to Sgt. Chapman for transportation.

Q. Did you have any conversation with these defendants concerning these items?

A. I did.

Q. You talked to both of them?

A. Yes, sir.

Q. Now, were they together or were they separated?

A. They were separated.

Q. Let us take the defendant Brice first, then. All the statements made by the defendant Brice were free and voluntary?

A. They were.

Q. And please relate the substance of that conversation. This is offered as to the defendant Brice only.

A. The defendant Brice stated to me that she had come to the apartment and was baby sitting for a person by the name of Pat, and that while she was there the defendant Brown arrived, and that they were just talking. That was about the extent of the conversation.

She also emphatically denied there was any marijuana in the Bull Durham sack, even when I pulled some of the material in it out and she observed, or, rather, I pointed out several green, leafy material in it, mixed up with the tobacco.

Q. What about the defendant Brown? All of the statements of the defendant Brown were free and voluntary?

A. Yes, they were.

Q. And this is offered as to the defendant Brown only. Please give us the conversation in substance with her.

A. The defendant Brown told me she had come to the apartment to change clothing, and that she ob-

served the defendant Brice in the bathroom in a stupor, falling against the walls and unable to stand.

That her, in the company of a person by the name of Tony, had picked her up off the bathroom floor and carried her out into the living room.

Q. Would you limit your conversation as to the exhibits recovered, please? What did she have to say about those items?

A. About the pills, she said she didn't know anything about them.

About the roach in her pocket, she stated that she had taken that from the defendant Brice's hands when she was trying—when the defendant Brice was trying to light it, and had taken the roach and placed it in her watch pocket and had completely forgot about it until the Matron had found it.

Q. That was Matron New?

A. Yes.

Q. Did Matron New turn it over to you?

A. Yes, she did.

Q. Did she have any conversation with you concerning whose stash, or anything like that?

A. I asked her if there was a large stash of marijuana in the apartment. She said there could possibly be a stash, because another person who lives there is known to be in the traffic or marijuana, but that she didn't know where it was, but she would help me look for it.

Q. That was it?

A. That was it.

Q. Was anybody else in this apartment beside these two defendants when you entered?

A. No.

Q. Is there a rear door?

A. There is a side door just east of the entrance.

Q. That is visible in the hallway?

A. Yes, and it has the doorknob taken out of it with a hole approximately a quarter of an inch in diameter.

Q. You are unable to get out of there?

A. No one can get out, because it is locked.

Q. You did not see anybody go in or out from the time you went up there?

A. No.

Q. Everything you told us about took place in the County of Los Angeles?

A. Yes.

Mr. Senulman. Cross examine.

Cross Examination

By Mr. McMullen:

Q. You say this apartment is an apartment of a known marijuana peddler?

A. No, sir.

Q. Do you know whether it is or not?

A. This apartment, I believe, is Pat Byers' apartment.

Q. And who is Pat Byers?

A. She is a lady that lives there.

Q. Do you know whether or not anybody that formerly lived in that apartment is presently in prison for possession of narcotics?

A. No, sir.

Q. Where did you first see Officer Chapman preceding the arrest?

A. At my mother's house. He came up to pick me up.

Q. About what time was that?

A. Approximately twenty minutes to eight.

Q. Did he inform you about an anonymous call?

A. He stated he had some information regarding some marijuana.

Q. What did he state was his information?

A. I can't recall whether he stated to me at the time that there was an anonymous call to the station or not. I have learned that since.

Q. But what did he state to you when you met him?

A. That he had some information on some marijuana.

Q. Did he say what the information was?

A. I can't recall at this time.

Q. Did he ask you to go anywhere?

A. Yes.

Q. And did you have any conversation with him while you were going to that place?

A. Not on this case, not too much.

Q. Was the name of Miss Brown mentioned before you found her in the apartment?

A. No, sir.

Q. She was never discussed?

A. No, sir.

Q. Her name was not mentioned?

A. No, sir.

Q. And as you approached the apartment you were with Officer Chapman?

A. Yes, sir.

Q. And where is that apartment located in the building?

A. It is located—the doors are located on the north side of the hallway on the second floor from the street level.

Q. Well, are there any windows near that front door to the apartment?

A. No, sir.

Q. And you say you smelled marijuana?

A. Yes, sir.

Q. How far away from the door did you detect it?

A. I had my nose right next to the opening in the second door.

Q. You had your nose next to what?

A. There is an opening where the doorknob ordinarily fits. The doorknob is gone and, therefore, there is a hole there.

Q. Was that the front door?

A. That is the door just east of the front door.

Q. There are two doors?

A. Yes, sir.

Q. And you say you smelled this marijuana through a hole?

A. Yes, sir.

Q. Did you smell it any distance away from there?

A. No. From that position—I observed Officer Chapman to be walking west, and then south away from the door, and then I observed Officer Chapman

attempt to ring a doorbell or something to get admittance and he motioned me over.

Q. You were with him at all times?

A. Yes.

Q. And you could not smell any marijuana except through this hole?

A. That is where I was smelling.

Q. What was your discussion with Officer Chapman during that time you were in the building?

A. There was no discussion at the time required.

Q. Did he say to you he smelled marijuana, or did you say to him, "I smell marijuana," or did neither one of you say anything?

A. I think there was a mutual understanding.

Q. A silent understanding?

A. Yes, sir.

Q. And then Officer Chapman walked in?

A. Yes, sir.

Q. And he never said to you, "Do you smell marijuana"?

A. No. We didn't say anything, any verbal conversation at all.

Q. And there was no discussion at all about what information Officer Chapman had received while you were going to this apartment?

A. Like I said, I can't recall at this time, because I have learned since then there was an anonymous call, but at the time I was not thinking too much about it. I don't think he mentioned it.

Q. Why did he ask you to go?

Mr. Schulman. I object to that as calling for a conclusion.

The Court. Sustained.

Mr. McMullen. I didn't mean it that way.

Q. by Mr. McMullen. What did he state was the reason, if any, for your going to this apartment?

Mr. Schulman. I object to that as having been asked and answered.

The Court. Yes, that has been asked and answered, Counsel.

Mr. McMullen. Very well, your Honor.

By Mr. Morris:

Q. Where did you find the pills?

A. The pills were just outside of the bathroom on a drasser by the defendant Brown's sweater.

Q. Were they in a bottle?

A. No, sir. They were in the Salem package.

Mr. Morris. That is all.

Mr. Schulman. No further questions.

(Witness excused.)

Mr. Schulman. The People offer into evidence People's Exhibits 1-A through 1-D heretofore marked for identification.

The Court. They will be received as marked for identification.

Mr. Schulman. The People rest.

The Court. Any defense?

Mr. McMullen. No, your Honor, there will be no defense at this time. I would like to point out to the Court that the only possible justification for entering this apartment was the so-called smell of marijuana.

The Court. That is a pretty good reason, in my opinion.

Any defense on the part of the defendant Brice?

Mr. Morris. I should like the charge with regard to the pills be dismissed as to the defendant Brice.

The Court. The only charge is the possession of marijuana. The pills are not narcotics, it was so stated.

The defendants will be held to answer and are ordered to appear in Department "B" of the Santa Monica Branch of the Los Angeles County Superior Court on Wednesday, May 6, 1959, at 9:30 a.m. for arraignment.

Bail is fixed in the sum of $1500.00 each.

Mr. Morris. With regard to the defendant Brice, her father is in the courtroom and they live in Hollywood. This is her first offense and I would like to ask that bail be very substantially reduced, if possible.

The Court. If the District Attorney will recommend a bail reduction, the Court will be glad to, yes.

Mr. Schulman. No. I requested a $1500.00 bail, and I was led to understand there is a minimum of $2500.00, so I think it is $1,000.00 under the minimum.

The Court. Very well. Motion denied.

(12:10 o'clock p.m.)

In the Municipal Court of Santa Monica Judicial District, County of Los Angeles, State of California

Division II — Hon. Harry J. Borde, Judge

The People of the State of California, Plaintiff, vs. Roberta S. Brice and Geomais L. Brown, Defendant(s)	No. F-2278

It Appearing To Me that the offense( ) in the within deposition mentioned, to wit: Violation of Section 11500 of the Health and Safety Code, a felony, has been committed and that there is sufficient cause to believe the within named Roberta S. Brice and Geomais L. Brown guilty thereof, I order that they be held to answer to the same, and that they be admitted to bail in the sum of $1500.00 each and be committed to the custody of the Sheriff of Los Angeles County until they give such bail.

Dated, this 16th day of April, 1959.

s/ Harry J. Borde
Judge of the Municipal Court of
Santa Monica Judicial District
County of Los Angeles
State of California.
Committing Magistrate

In the Municipal Court of Santa Monica Judicial District, County of Los Angeles, State of California

The People of the State of California, Plaintiff, vs. Roberta S. Brice and Geomais L. Brown, Defendant(s)	No. F-2278

I Hereby Certify that on the 16th day of April, 1959, Simone Elden, Official Reporter of the Municipal Court of Santa Monica Judicial District, County of Los Angeles, State of California, reported the testimony and proceedings in the above entitled action, that she did act as such reporter and was by me on this 16th day of April, 1959, directed to reduce her shorthand notes into typewriting.

.....

Judge of the Municipal Court
Santa Monica Judicial District
County of Los Angeles
State of California.
Committing Magistrate

State of California
County of Los Angeles—ss.

I, Simone Elden, Official Reporter of the Municipal Court of Santa Monica Judicial District, County of Los Angeles, State of California, do hereby certify that the foregoing pages comprise a full, true and correct transcript of the testimony taken and proceedings had in the case of The People of the State of Calif., Plaintiff, vs. Roberta S. Brice and Geomais L. Brown, Defendants, and that the said transcript contains all of the evidence, acts and statements of the Court made during the progress of said proceedings.

Dated, this 16th day of April, 1959.

.....
Official Reporter

Appendix B

In the District Court of Appeal of the
State of California,
Second Appellate District, Division One.

Roberta S. Brice, Petitioner, vs. The Superior Court of the State of California, in and for the County of Los Angeles, Department 'A' thereof, Hon. Allen Lynch, Judge. Respondents.	No.

PETITION FOR WRIT OF PROHIBITION.

To: The Honorable, the Presiding Justice, and to the Honorable, the Associate Justices of the District Court of Appeal of the State of California, Second Appellate District, Division One.

Your Petitioner, Roberta S. Brice, respectfully applies for a Writ of Prohibition, by this, her verified Petition, and in this behalf, sets forth the following facts and causes for the issuance of the Writ.

- I -

That at all times herein mentioned, Petitioner was and now is a citizen of and resident in the City of Los Angeles, County of Los Angeles, State of California.

- II -

That Respondent Superior Court of the State of California, in and for the County of Los Angeles, is a Court of general jurisdiction having its jurisdiction pursuant to the Constitution and laws of the State of California.

That William B. McKesson is the duly qualified and acting District Attorney of Los Angeles County, California.

- III -

That on 27 April, 1959, your Petitioner was a defendant before Respondent Superior Court of the State of California, in and for the County of Los Angeles, Department 'A' thereof, Honorable Allen Lynch, Judge, in that certain action then pending in said Court entitled: "The People of the State of California, Plaintiff, vs Roberta S. Brice, Defendant, and in the records of said Court numbered 214595, in which said action Petitioner was accused of a violation of Section 11500 of the Health and Safety Code of the State of California, a felony, by an Information duly filed by William B. McKesson, District Attorney of Los Angeles County, California.

- IV -

That prior thereto, on 16 April, 1959, your Petitioner had a preliminary hearing on said charge, before the Municipal Court of Santa Monica Judicial District, County of Los Angeles, State of California, Hon. Harry J. Borde, Judge Presiding.

That on said 16 April, 1959, the said Court made and entered its order holding your Petitioner to answer to said charge before Respondent Superior Court.

That your Petitioner was held to answer by order of said Court without reasonable or probable cause to believe the felony charged, or any public offense had be committed, and that there was not sufficient cause to believe Petitioner guilty of the offense charged, or any public offense.

That the commitment of Petifioner by the said Court as aforesaid, was made entirely upon the basis of incompetent evidence, illegally obtained, by and thru forcible and illegal entry upon private premises, and illegal search and seizure.

That the said Court erred on the question of admissibility of the evidence, and erred on the exclusion thereof.

That in your Petitioner's preliminary hearing, a prima facie showing of illegal and forcible entry was made by establishing the officers broke into private premises without a search warrant, and without compliance with or regard to the provisions of Sec. 844 of the Penal Code of California. A prima facie showing was made that no great or serious emergency then confronted the officers. Their safety or well-being was not in jeopardy. They did not knock upon the door of the premises, or announce or identify themselves, and to demand admission. Or explain the purpose for which they desired admission. They simply broke into

private premises without a search warrant, or a warrant of arrest, and after entry upon the private premises, the officers searched same, and the person of your Petitioner, and then arrested your Petitioner without a warrant of arrest.

That there was no reasonable or probable cause for such forcible and illegal entry by the officers, and no justification for such forcible and illegal entry, search, seizure and arrest. Your Petitioner was lawfully and peacefully present in the apartment, as the record will show. She had done nothing to arouse or cause suspicion of anyone, when the officers broke in. The fact that the apartment belonged to another is immaterial, she was there present as a guest or invitee of the occupant of the apartment.

That your Petitioner hereby incorporates, by reference, as tho more fully set out herein, the entire transcript of said preliminary hearing before said Court on said 16 April, 1959, and the same is hereto attached and marked Petitioner's exhibit 'A'.

-V-

That because of the matters and things hereinabove set forth the order of said Court made on 16 April, 1959, committing your Petitioner to answer before Respondent Superior Court is void, and confers no jurisdiction upon said Respondent Superior Court over your Petitioner, because the said order was made entirely upon incompetent evidence, illegally obtained by and thru forcible and illegal entry, illegal search and seizure, and illegal arrest. And because your Peti-

tioner had been committed without reasonable or probable cause.

- VI -

That on or about 20 May, 1959, Petitioner filed with Respondent Superior Court, her Motion under Sec. 995 Penal Code of California, that the above entitled and within numbered Information against her, then pending before said Court, be set aside and dismissed, upon the ground that she had been held to answer without reasonable or probable cause. That on 3 June, 1959, Petitioner's said motion was denied by said Respondent Superior Court.

- VII -

That unless restrained and prohibited by the order of this Court, Respondent Superior Court of the State of California, in and for the County of Los Angeles, Department 'A' thereof, threatens to, intends to, and will entertain, pass upon, try, hear and decide matters and things based upon the within entitled and above numbered Information against your Petitioner, now pending before Respondent Superior Court.

- VIII -

That Respondent Superior Court has no jurisdiction in the said matter for the reason that Petitioner's commitment to Respondent Superior Court was without reasonable or probable cause, and that the said commitment was and is based entirely upon incompetent evidence, illegally obtained by and thru forcible

and illegal entry upon private premises by the arresting officers, illegal search of said premises and of the person of your Petitioner by the officers after their entry upon the premises, without any proper justification, or any reasonable or probable cause.

-IX-

That your Petitioner is the party beneficially interested in this proceeding; That the names of the parties interested, who will be affected by this petition are; Your Petitioner and William B. McKesson, District Attorney of Los Angeles County, California.

-X-

That your petitioner has no plain, speedy and adequate remedy in the ordinary course of law. That the remedy by appeal from any judgment which might be rendered in the action herein referred to and now pending before Respondent Superior Court, is in no wise speedy or adequate, for the reason that the Information herein is void, and confers no jurisdiction upon Respondent Superior Court to proceed with trial, where there is no competent evidence to connect your Petitioner with the crime charged, or any other public offense. That it would be a grave injustice to Petitioner if she would be required to undergo the ordeal, ignominy and expense of a trial under these circumstances.

-XI-

That this application, for the issuance of a Writ of Prohibition is made to this Court in the first instance

for the reason that this Court is of original jurisdiction, the Respondent Superior Court having denied Petitioner's Motion under Sec. 995 Penal Code, to dismiss and set aside the Information herein, on 3 June, 1959.

Wherefore, your Petitioner prays:

That an alternative Writ of Prohibition be issued by this Court, restraining the said Superior Court of the State of California, in and for the County of Los Angeles, Department 'A' thereof, its officers and agents, and all persons acting by and thru its orders, from taking any further steps or proceedings in connection with, or based upon Information number 214595, and entitled: "The People of the State of California, Plaintiff, vs Roberta S. Brice, Defendant", now pending before said Superior Court, until the further order of this Court, and that the said Superior Court be directed and required to show cause before this Court, at a specified time and place, why it should not be absolutely and forever restrained from taking any further proceedings against, or making any orders affecting Petitioner herein, based upon the above entitled and within numbered Information, and,

For such other and further relief as may to the Court seem meet and just in the premises.

Thomas Morris
Attorney for Petitioner.

Dated: June, 1959.

State of California,
County of Los Angeles.—ss.

Roberta S. Brice, being first duly sworn on her oath, deposes and says:

That she is the Petitioner in the hereto attached Petition for a Writ of Prohibition,

That she has read the foregoing Petition for a Writ of Prohibition, and knows the contents thereof,

That the same is true of her own knowledge, except as to those matters which are therein stated upon her information or belief, and as to those matters, that she believes it to be true.

Further, deponent sayeth not.

Roberta S. Brice

Subscribed and sworn to before me, a Notary Public in and for said County and State this 7th day of June, 1959.

(Seal)

Eddy D. Field II

Eddy D. Field II, Notary Public in and for the County of Los Angeles, State of California. My Commission Expires January 21, 1963.

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IN THE

Supreme Court of the United States

October Term, 1959.

No. 505

ROBERTA S. BRICE,

Petitioner,

vs.

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, DEPARTMENT "A" THEREOF, HON. ALLEN LYNCH, JUDGE,

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Comes now the respondent, Stanley Mosk, Attorney General of the State of California, and William B. McKesson, District Attorney of Los Angeles County, California, as the real parties in interest and present the following matters in opposition to the petition for the writ of certiorari.

Questions Presented for Review.

It is petitioner's contention that she was arrested without a warrant and her person and apartment searched and she was deprived of due process of law pursuant to the Fourth, Fifth and Fourteenth Amendments of the Constitution of the United States. (Pet. p. 3.)

Statement of Case.

From the petition it appears that Roberta S. Brice, defendant in the Superior Court of the State of California in and for the County of Los Angeles and petitioner in the District Court of Appeal, State of California, Second Appellate District and in the Supreme Court of the State of California, petitions that a writ of certiorari issue out of and under the seal of this Court to review the order and final judgment of the District Court of Appeal of the State of California, Second Appellate District, entered on the 22nd day of June, 1959, and hearing denied by the Supreme Court of the State of California on the 22nd day of July, 1959. There were no opinions in the courts below. (Pet. pp. 1-2.]

Statement of Facts.

In Appendix A made a part of the petition, it appears: It was stipulated that Clifford Cromp is an expert qualified to give testimony concerning narcotics. Mr. Cromp received People's Exhibit 1 which was a brown envelope containing the following:

A small envelope (Marked 1A) containing a "roach" which in his opinion contained marijuana;

A small envelope (Marked 1B) containing a small quantity of green leafy material which in his opinion contained marijuana;

A Bull Durham sack (Marked 1C) containing tobacco and green leafy flakes which in his opinion contained marijuana;

Three packages of cigarette papers and a cellophane package (Marked 1D) containing tobacco and green leafy flakes which in his opinion contained marijuana. [Rep. Tr. pp. 3-6 incl.]

Ronald L. Chapman is a Sergeant of Police for the City of Santa Monica. At approximately 7:15 p.m., on the 9th of April, he received a telephone call that an anonymous person had stated there were two women in Apartment 15 at 1617 Appian Way, and they were believed to be smoking marijuana. The two women were baby sitting with two minor children. [Rep. Tr. p. 9.] This telephone call came to Chapman from Lt. Hicks. [Rep. Tr. p. 15.]

He and Officer Coria went to the location. As they approached the door Chapman could smell an odor which he believed to be marijuana smoke. He rang the doorbell, but could not hear anything other than low voices inside. He turned the doorknob and pushed the door open, at which time he saw the defendant Brice holding a Bull Durham sack and some cigarette papers. She looked in the officer's direction and said, "Sgt. Chapman, come on in." [Rep. Tr. pp. 9, 10.] This witness smelled marijuana smoke from outside doors on six to twelve prior occasions. [Rep. Tr. p. 21.] The Bull Durham sack is a part of People's Exhibit 1C. [Rep. Tr. p. 7.]

Luis Y. Coria is a policeman with the City of Santa Monica and found the objects which are marked as People's Exhibit 1A, 1B and 1D. 1A is a roach which was taken from the co-defendant Geomais L. Brown and turned

over to Coria by Matron New. 1B contained debris recovered by Coria from the left front pocket of the defendant Brice's levis. 1D contained three packages of cigarette papers which were recovered from the person of the defendant Brice. [Rep. Tr. pp. 22-24.]

Officer Coria also testified that he smelled the odor of burning marijuana outside of Apartment 15. [Rep. Tr. p. 23.] At this time the officer had his nose right next to an opening in the second door to the apartment. There was a hole in the door where the doorknob would ordinarily fit. [Rep. Tr. p. 29.]

The Petition for Writ of Prohibition in the Court Below.

In Appendix B, made a part of the petition, it appears to the petitioner's contentions that she was held to answer to the Superior Court without reasonable or probable cause; that the commitment was entirely based on incompetent evidence illegally obtained by the officers without any warrant. The petition, by reference, incorporates Exhibit A.

ARGUMENT.

I.

There Was Probable Cause for the Search and Seizure.

The information from an anonymous informant, standing alone, was not sufficient to establish probable cause, but the perception of the officers prior to the entry was sufficient to corroborate the information received. Each officer smelled the odor of marijuana smoke before the door was opened. It is submitted that this perception alone was sufficient to establish that a felony was being committed in the officers' presence. In *People v. Clifton* (April, 1959), 169 Cal. App. 2d at page 614, the officers smelled the ordor of marijuana on the defendant's clothing. In this regard, the court stated (p. 619):

> "An officer may use his sense of smell to afford him knowledge that an offense is being committed in his presence."

In *People v. Bock Leung Chew* (June, 1956), 142 Cal. App. 2d 400 a similar situation was presented to the court when an officer smelled the odor of opium coming from an apartment. The officers knocked on the door and were admitted to the apartment by a person who could not speak English, and thereafter opium was recovered. In this regard, the court stated:

> "Since the possession of opium is a felony, the officers who detect the odor of opium are entitled to believe that the felony of possessing opium is being committed in their presence."

Cf. People v. Cohn (1955), 44 Cal. 2d 434, 450-451, as to the rule of evidence on state courts.

II.

There Was No Evidence That the Officers Did Not Have a Search Warrant or a Warrant of Arrest.

Respondent has been unable to find anywhere in the transcript any evidence that the police officers in the instant case did not have a search warrant or a warrant of arrest. Since there is no showing with respect to a warrant, it must be presumed there was such a warrant and this is sufficient of itself to support the magistrate's determination that the evidence was admissible.

In *People v. Morris* (1958), 157 Cal. App. 2d 81, 83, it is stated:

> "Since in the present case the record is silent as to whether the officers had a warrant for the arrest of defendant and is silent as to whether they had a search warrant, we must presume they regularly and lawfully performed their duties, that they had a warrant for the arrest of the defendant, and therefore, that they had reasonable cause for his arrest; and we must presume that they had a search warrant and therefore that the search and seizure were lawful." (See also *Hatjis v. Superior Court* (1956), 144 Cal. App. 2d 426, 428.)

And in *People v. Jaquish* (May, 1959), 170 A. C. A. 407, 410, this statement is made:

> "It does not appear that the officers did not have a search warrant and hence it is presumed that they lawfully performed their duties." (Citing cases.)

III.

There Was No Objection Made to the Admission of the Narcotics.

The preliminary transcript reflects that at the time the marijuana was offered into evidence, the attorney for the petitioner did not object. [Rep. Tr. p. 31.]

In *People v. Banks* (1959), 170 A. C. A. 78, 80, the court stated:

> "The first contention to be considered is that the contraband was obtained by means of an unlawful search and seizure. As mentioned earlier, the marijuana was received in evidence without objection. It is sufficient to say at this point that the admissibility of evidence allegedly obtained by means of an illegal search and seizure will not be reviewed on appeal in the absence of a proper objection in a trial court."

See also *People v. Postell* (1959), 170 A. C. A. 46, 50; *People v. Richardson* (1959), 51 Cal. 2d 445; *Robinson v. Superior Court* (1957), 49 Cal. 2d 186.

IV.

No Federal Constitutional Question Is Presented.

From the facts and proceedings in the courts below, it is respondent's contention that the petitioner was legally committed on evidence that established reasonable cause to believe that she committed the alleged offense charged and that none of her constitutional rights were violated. (See *Draper v. United States* (1958), 79 S. Ct. 329, 3 L. Ed. 327 defining reasonable cause.)

In *Stembridge v. Georgia* (1952), 343 U. S. 541, 96 L. Ed. 1130, 72 S. Ct. 834, it is stated:

> "Where the highest court of the state delivers no opinion and it appears that the judgment *might* have rested upon a nonfederal ground, this Court will not take jurisdiction to review the judgment.
>
> * * * * * * * * *
>
> "We are without jurisdiction when the question of the existence of an adequate state ground is debatable. Bachtel v. Wilson, 204 US 36, 51 L ed 357, 27 S Ct 243. The petition for certiorari was improvidently granted, and the case is dismissed."

Conclusion.

Upon the record and for the reasons stated, respondent submits that no substantial federal question is presented by the petition filed herein for a writ of certiorari and that the same should be denied.

Respectfully submitted,

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By WILLIAM E. JAMES,
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